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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,332	12/30/2003	Daniel F. Justin	13447.42	9889

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EXAMINER

SWIGER III, JAMES L

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/749,332

Applicant(s)

JUSTIN ET AL.

Examiner

James L. Swiger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 30-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 30-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/17/2005; 2/9/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Invention I, claims 1-20 in the reply filed on 7/28/2006 is acknowledged.

Claims 21-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/28/2006.

### ***Claim Objections***

Claim 41 is objected to because of the following informalities: in line 6 of claim 41, the word "begin" should be replaced with --being--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9, 12-16, 18, 30-36, 38 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourque (US Patent 5,163,940). Bourque discloses a guide assembly for a tibia having a brace (22) having a first and second ends (see Fig. 2), a template on the first end (28) of the brace, and a tubular guide sleeve (78/32) on the

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second end of the brace (that is considered substantially U-shaped--a wide "u"--) that is capable of being selectively biased against a lateral, medial, or anterior side of a tibia if a surgeon wishes to do so and has a distal end (74). The template also comprises a base plate portion (87) with a projection at the end (86) that is positioned to catch or be associated with the end of the tibia. It may also be "biased" depending on the intended use during surgery. Bourque also disclose markings (76) and a central longitudinal axis (36).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 17 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourque '940 in view of Purnell et al. (US Patent 4,781,182). Bourque disclose the claimed invention except for a plurality of alternative templates. Purnell et al. disclose a plurality of templates (Fig. 2) so that the device can be used for a plurality of uses (Col. 6, lines 37-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Bourque having at least a plurality of templates in view of Purnell et al. to better use the device for use on the tibia.

Claims 10, 19 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourque in view of Ko (US Patent 5,354,302). Bourque disclose the claimed

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invention except for a plurality of teeth formed at the end of the guide sleeve. Ko discloses teeth (22a-d) and Fig. 2 that allow instruments to access the specified area better (see C ol. 5, lines 46-58). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Bourque having at least teeth at the end of the guide sleeve in view of Ko to allow better access to the tissue area for instruments.

Claims 11, 20 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourque in view of Chan (US Patent 6,120,511). Bourque discloses the claimed invention except for a tubular drill sleeve within the guide sleeve and a guide wire. Chan discloses (refer to Fig. 14) a tubular drill sleeve (48) that is within the guide sleeve (82) and has a guidewire (52) see Col. 2, lines 12-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Bourque having at least a tubular drill sleeve and a guide wire in view of Chan to better bore into the tibia, as guided by the device.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLS

 10/2/00

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER